

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DAVID O’KANE,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICE; THE LEGAL
AID SOCIETY; RICHARD DeSLOM; JANE
DOE, Parole Officer,

Defendants.

20-CV-2148 (LLS)

ORDER

LOUIS L. STANTON, United States District Judge:

Plaintiff, proceeding *pro se* and *in forma pauperis*, brings this action under 42 U.S.C. § 1983. By order dated July 10, 2020, the Court directed Plaintiff to amend his complaint to cure its deficiencies. (ECF No. 7.) On September 1, 2020, Plaintiff submitted an application to request *pro bono* counsel. (ECF No. 9.)

The factors to be considered in ruling on an indigent plaintiff’s motion for *pro bono* counsel include the merits of the case, the plaintiff’s efforts to obtain a lawyer, and the plaintiff’s ability to gather the facts and present the case if unassisted by counsel. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986). Of these, the merits are “[t]he factor [that] command[s] the most attention.” *Cooper*, 877 F.2d at 172. And even if a court does believe that a litigant should have a free lawyer, under the *in forma pauperis* statute, a court has no authority to “appoint” counsel, but instead, may only “request” that an attorney volunteer to represent a litigant. *Mallard v. U.S. Dist. Court for the S. Dist. of Iowa*, 490 U.S. 296, 301-10 (1989).

Because it is too early in the proceedings for the Court to assess the merits of this action, the Court denies Plaintiff’s motion for *pro bono* counsel without prejudice to Plaintiff’s filing a

new application for the Court to request *pro bono* counsel at a later date. The Court grants Plaintiff an extension of time to comply with the July 10, 2020 order to amend.

Plaintiff may wish to consider contacting the New York Legal Assistance Group's (NYLAG) Legal Clinic for Pro Se Litigants in the Southern District of New York, which is a free legal clinic staffed by attorneys and paralegals to assist those who are representing themselves in civil lawsuits in this Court. They may be able to help Plaintiff amend his pleading. A copy of the flyer with details of the clinic is attached to this order. The clinic is currently **only** available by telephone.

CONCLUSION

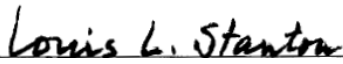
The Court denies Plaintiff's motion for *pro bono* counsel without prejudice, and the Clerk of Court is directed to terminate it (ECF 9.)

Plaintiff is directed to file an amended complaint that complies with the July 10, 2020 order. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within sixty days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 20-CV-2148 (LLS). No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the complaint will be dismissed.

Plaintiff has consented to electronic service of court documents.

SO ORDERED.

Dated: September 1, 2020
New York, New York



Louis L. Stanton
U.S.D.J.



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A grayscale background image of the Thurgood Marshall United States Courthouse, a large, ornate building with many windows and a prominent entrance.

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